



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 210315-0057]

RIN 0648-BK38

#### Fisheries of the Exclusive Economic Zone off Alaska; Central Gulf of Alaska

#### Rockfish Program; Modify Season Start Date

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; emergency action.

**SUMMARY:** NMFS issues an emergency rule to modify the fishing season start date for fishing vessels participating in a rockfish cooperative as part of the Central Gulf of Alaska Rockfish Program (Rockfish Program) for the 2021 fishing year. This emergency rule is intended to provide flexibility to Rockfish Program participants by moving the fishing season start date from May 1, 2021 to April 1, 2021. This emergency rule does not modify other provisions of the Rockfish Program. This emergency rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan for Groundfish of the Gulf of Alaska Management Area (GOA FMP) and other applicable laws.

**DATES:** Effective [*insert date of publication in the Federal Register*] through [*insert date 180 days after date of publication in the Federal Register*].

**ADDRESSES:** Electronic copies of the Regulatory Impact Review (referred to as the “Analysis”) and the Categorical Exclusion prepared for this emergency rule may be obtained from <http://www.regulations.gov> identified by Docket ID NOAA-NMFS-2021-

0021 or from the NMFS Alaska Region website at

<https://www.fisheries.noaa.gov/region/alaska>.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Watson, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

*Authority for Action*

NMFS manages U.S. groundfish fisheries of the GOA under the GOA FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the GOA FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the GOA FMP appear at 50 CFR parts 600 and 679. The Rockfish Program is implemented by the GOA FMP and regulations at 50 CFR parts 600 and 679.

**Background**

On January 29, 2021, the Council received a request from Rockfish Program participants to consider emergency action under section 305(c) of the Magnuson-Stevens Act to modify the fishing season start date for the Rockfish Program in 2021. On February 10, 2021, the Council recommended that NMFS implement an emergency rule to modify the fishing season start date for fishing vessels participating in a rockfish cooperative as part of the Rockfish Program from May 1, 2021 to April 1, 2021 to address the negative economic and social impacts on harvesters and processors participating in the Rockfish Program and the community of Kodiak, Alaska due to the Coronavirus (COVID-19) pandemic.

The following sections describe the Rockfish Program, the existing dates of the fishing season, the emergency rule, and justification for emergency action.

*The Rockfish Program*

This section provides a brief overview of the Rockfish Program and additional detail is available in Section 2 of the Analysis (see **ADDRESSES**).

The Rockfish Program is a limited access privilege program (LAPP) developed to enhance resource conservation and improve economic efficiency in the Central Gulf of Alaska (CGOA) rockfish fisheries. The Rockfish Program was implemented by Amendment 88 to the GOA FMP (76 FR 81247, December 27, 2011), and reauthorized under Amendment 111 to the GOA FMP on March 31, 2020 (86 FR 11895, March 1, 2021). For more information about the background and history of this program, see the preamble to the final rule for Amendment 111 (86 FR 11895, March 1, 2021).

Generally, the Rockfish Program (1) assigns quota share (QS) and cooperative quota (CQ) to participants for primary and secondary species, (2) allows a participant holding an license limitation program (LLP) license with rockfish QS to form a rockfish cooperative with other persons, (3) allows holders of catcher/processor LLP licenses to opt-out of rockfish cooperatives for a given year, (4) establishes a limited access fishery for participants who do not participate in a fishery cooperative for a given year, (5) includes an entry level longline fishery for persons who do not hold rockfish QS, (6) establishes constraints, commonly known as sideboard limits, for other non-Rockfish Program fisheries that apply to vessels and LLP licenses eligible to participate in the Rockfish Program, and (7) includes monitoring and enforcement provisions.

As summarized in Sections 2 and 4.2 of the Analysis (SEE **ADDRESSES**), one of the overall goals of the Rockfish Program is to provide greater security to harvesters through the formation of rockfish cooperatives. Fishing under cooperative management resulted in a slower-paced fishery that allows a harvester to choose when to fish. The Rockfish Program also provided greater stability for processors by spreading out production over a longer period. Overall, the Rockfish Program provides greater benefits to shoreside processors, catcher/processors, CGOA fishermen, and communities than were realized under the previous LLP management scheme.

Amendment 111 to the FMP and the implementing final rule (86 FR 11895, March 1, 2021) reauthorized the Rockfish Program, removed the Rockfish Program sunset date of December 31, 2021 and addressed a variety of administrative and management issues associated with the existing Rockfish Program. For more detail on the changes made by Amendment 111 to the FMP, see the preambles to the proposed rule (85 FR 55243, September 4, 2020) and final rule (86 FR 11895, March 1, 2021).

*Rockfish Program Fishing Season Dates*

Fishing by cooperative participants, specifically fishing vessels, under the Rockfish Program is currently authorized from 1200 hours, A.l.t., May 1 through 1200 hours, A.l.t., November 15 each year. With implementation of the Rockfish Program, the Central GOA rockfish fishery has changed from an approximate 3-week race to fish starting at the beginning of July, to a fishery that primarily occurs in May and June, with smaller harvest amounts occurring until November. Prior to the implementation of the Rockfish Program, the Gulf of Alaska rockfish fisheries opened on July 1 for fishing vessels using trawl gear.

As summarized in Section 3 of the Analysis (SEE **ADDRESSES**), the Rockfish Program was developed to slow the race for fish, minimize bycatch and associated mortalities, provide for improved conservation of habitat, and address the social and economic concerns that have arisen under the original management system. The longer fishing season established under the Rockfish Program provides participants access to markets (including a possible fresh market) that were historically impossible to access because of the short duration and timing of the previous open access fishing season. In addition, by slowing the race for fish, Rockfish Program participants could focus on improving the quality of their landings, increasing fishery value and reducing overall Prohibited Species Catch (PSC).

The lengthened fishing season under the Rockfish Program, enables cooperative members to consolidate their rockfish allocations and realize operational efficiencies.

As summarized in Section 3.6 of the Analysis, the start and end dates for the current fishing season under the Rockfish Program were set based on considerations of bycatch of other species, rockfish reproduction, and processor activity. The pre-Rockfish Program July season start date for the rockfish trawl fishery was intended to reduce halibut PSC.

Under the Rockfish Program, an earlier start date was implemented because PSC limits are effectively managed by participating cooperatives. Bycatch of non-PSC species has been minimally impacted by the extended Rockfish Program season. The overall level of halibut, chinook and chum salmon PSC in the Rockfish Program remains low due to the PSC avoidance measures implemented by cooperative managers that include various reporting requirements and bycatch standards that have been proven to reduce PSC under the extended season.

In establishing existing Rockfish Program season start date, the Council and NMFS considered the timing of rockfish reproduction. The proposed April 1 season start date for this emergency rule is within the range of season start dates analyzed in the implementation of Rockfish Program. Section 3.6 of the Analysis prepared for this emergency rule notes that modifying the opening season start date to April 1 would not create a biological concern but that the most conservative management approach would be to maintain the season start date at May 1 to marginally reduce any potential fishery impacts on rockfish reproduction and improve operational efficiency by staggering the opening of this fishery relative to other fisheries.

The season closing date of November 15 was selected to allow for fishing activity to be distributed over the course of the year where value could be maximized and efficiencies improved. An earlier or later end date was not given a large amount of

consideration as November 15 corresponds closely with when processors and plants are generally closing for the fishing year.

### **This Emergency Rule and Justification for Emergency Action**

This emergency rule modifies the season start date from May 1, 2021 to April 1, 2021 for fishing vessel members of a cooperative under the Rockfish Program in the 2021 fishing year. This emergency rule is intended to provide flexibility for vessel operators and shoreside processors that receive deliveries from harvesters in a cooperative by establishing a longer timeframe in which they would be able to harvest the quota. This emergency rule adds regulations at § 679.80(a)(3)(iii) to modify the season start date to begin on April 1 at 1200 hours Alaska local time for the 2021 fishing year. This emergency rule temporarily suspends regulations at § 679.80(a)(3)(ii) that authorize fishing vessels that are members of rockfish cooperatives to commence fishing on May 1 at 1200 hours Alaska local time for the 2021 fishing year. The season end date of November 15 at 1200 hours Alaska local time remains unchanged. This emergency rule does not modify any other aspect of the Rockfish Program. Modifying the season start date to April 1 would only affect the 2021 fishing year. In subsequent years, the season start date would return to May 1.

This emergency action does not impose additional restrictions on the fishery, but would alleviate limitations on the fishery. This emergency rule does not increase the amount of fish available to harvest, increase the risk of overharvest, or otherwise modify conservation measures. This emergency rule is needed to allow for the complete and efficient harvest of the rockfish fishery and to temporarily alleviate unforeseen economic and social consequences due to the recent and unforeseen limitations on the rockfish fishery. This emergency rule does not modify existing requirements on the types of vessels and gear that could be used, monitoring requirements, record keeping regulations, or other aspects of the Rockfish Program.

Section 305(c) of the Magnuson-Stevens Act authorizes the Secretary to promulgate regulations to address an emergency. Under that section, a Council may request that the Secretary promulgate emergency regulations. NMFS's Policy Guidelines for the Use of Emergency Rules require that an emergency must exist and that NMFS have an administrative record justifying emergency regulatory action and demonstrating compliance with the Magnuson-Stevens Act and the National Standards (see NMFS Procedure 01-101-07 (March 31, 2008) and 62 FR 44421; August 21, 1997). Emergency rulemaking is intended for circumstances that are “extremely urgent,” where “substantial harm to or disruption of the . . . fishery . . . would be caused in the time it would take to follow standard rulemaking procedures (62 FR 44421-01).”

Under NMFS' Policy Guidelines for the Use of Emergency Rules, the phrase “an emergency exists involving any fishery” is defined as a situation that meets the following three criteria:

1. Results from recent, unforeseen events or recently discovered circumstances;
2. Presents serious conservation or management problems in the fishery; and
3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.

The following sections describe why the Council and NMFS determined that modifying the season start date to April 1 for the 2021 fishing year meets these criteria.

*Criterion 1—Recent, Unforeseen Events or Recently Discovered Circumstances*

Two recent and recently discovered circumstances have limited the ability of vessels to harvest and process groundfish in the port of Kodiak in 2021. Rockfish Program catcher vessels and the shoreside processors the vessels deliver to are located only in the port of Kodiak. First, beginning in early 2021, the groundfish fleet operating

out of Kodiak has discovered that there are no longer economically viable markets for a variety of flatfish species, including species such as arrowtooth flounder. For several decades, these markets have been essential to harvesters and processors operating out of Kodiak. This lack of economically viable markets has created an unforeseen lack of harvesting and deliveries to processors operating out of Kodiak in the month of April. The U.S. government has recognized the impact of limited seafood markets and included flatfish fisheries prosecuted in Alaska in the Seafood Trade Relief Program (STRP), which provides payments to eligible commercial fishermen of seafood commodities that have been impacted by trade actions of foreign governments resulting in the loss of exports (85 FR 56572). In addition to flatfish, Kodiak processors and harvesters are heavily dependent on the salmon and rockfish fisheries. Rockfish landings at Kodiak processors occur in May and June, after flatfish in April, and are followed by summer salmon landings.

Second, COVID-19 outbreaks in January and February 2021 in three large processors in the communities of Akutan and Unalaska, shut down fishing and processing operations in those communities for several weeks, creating widespread disruptions during the fishing season and broad economic impacts. Throughout 2020, processing facilities in Alaska were able to operate effectively with limited long-term disruption to processing activities. While Kodiak processors have not seen widespread COVID-19 outbreaks, the mitigation measures there mirrored those of the three large processors in the communities of Akutan and Unalaska. The closure of processing facilities in Alaska in early 2021 was not anticipated based on largely successful mitigation of COVID-19 in 2020. Even with strict mitigation measures in place, these outbreaks raise concern of future outbreaks across processing facilities in Alaska. Given the continued risk of COVID-19 transmission and outbreaks, and lack of widespread vaccinations, fishery participants anticipate there may be additional processor shutdowns throughout 2021.



For Kodiak processors, an earlier start date for the Rockfish Program will help alleviate the operational disruption and economic impact from the lack of a flatfish market in April and will help ensure adequate processing capacity to fully prosecute the rockfish program fisheries throughout the 2021 fishing season. Due to these limitations, and the recent, unforeseen circumstances, an emergency action is required to move the start date of the 2021 Rockfish Program fishery to April 1.

*Criterion 2—Presents Serious Conservation or Management Problems in the Fishery*

Recent, unforeseen, and ongoing COVID-19 outbreaks in processing plants across Alaska present serious management problems in the Rockfish Program. If the season start is not moved to April 1, 2021, there is a risk that the rockfish season may conflict with the summer salmon fisheries, causing seafood businesses to choose between one revenue source or another, particularly if a COVID outbreak occurs in Kodiak and reduces processing capacity for several weeks. This presents a serious management problem for the fishery.

Additionally, moving the season start date to April 1, 2021 will help processors continue to employ fishermen and plant personnel throughout April, a month that is typically busy with flatfish but will have an anticipated gap in 2021 due to the lack of a flatfish market. By permitting fishing and processing operations through the month of April, this emergency rule would result in a decrease in travel to and from the port of Kodiak, Alaska, thereby reducing the health risks to essential seafood workers and residents.

*Criterion 3—Can Be Addressed Through Emergency Rulemaking for Which the Immediate Benefits Outweigh the Value of Notice and Comment Rulemaking*

NMFS and the Council have determined that the emergency situation created by the lack of a flatfish market and the continued risk of COVID-19 outbreaks across processing and fishing operations can be addressed by emergency regulations. Opening

the rockfish season one month earlier does not create conservation and management concerns because the earlier start date was analyzed during the development of the Rockfish Program and is consistent with the overall goals of the Rockfish Program to provide additional harvest flexibility to cooperative participants.

To address the emergency in a timely manner, NMFS must implement an emergency rule that waives the notice-and-comment rulemaking period. The benefits of waiving notice-and-comment rulemaking will serve the industry and public by allowing an additional month for fishery participants to harvest rockfish. Any delay that results in implementing this rulemaking may impact the ability for the fishery to start earlier. Section 4 of the Analysis (SEE **ADDRESSES**) describes the potential additional harvest opportunities for the rockfish participants in greater detail.

Without the waiver of notice-and-comment rulemaking, the Rockfish Program cooperative participants will not have sufficient time for operational planning before the requested April 1, 2021 season opening date. Without sufficient notice of the season opening date, fish processors participating in the Rockfish Program may not have enough time to staff their facilities and coordinate fishing activities for an earlier season.

The Council could not recommend and NMFS could not implement an earlier season start date through the conventional notice-and-comment rulemaking process before the regular 2021 Rockfish Program begins on May 1. Typically, the process of Council analysis and rulemaking takes at least one-year to implement. In this case, NMFS received the request for regulatory change on February 10, 2021, and the next regularly scheduled Council meeting begins April 5, 2021. Given that the Rockfish Program starts on May 1, 2021, this rule starts the season a month earlier, and the time required for Council action and notice-and-comment rulemaking, this process could not be accomplished before the earlier start date of April 1, 2021.

As discussed further below, emergency-based fishery regulations that waive prior notice and comment and a 30-day delay in effectiveness period must be consistent with the requirements of the Administrative Procedure Act (APA).

### **Classification**

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) of the APA to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. The benefits of waiving notice-and-comment rulemaking will serve the industry and public by allowing an additional month for fishery participants to harvest rockfish. Any delay that results in implementing this rulemaking may impact the ability for the fishery to start earlier. This emergency rule would modify the season start date for members of a rockfish cooperative as part of the Central Gulf of Alaska Rockfish Program (Rockfish Program) for the 2021 fishing year. This emergency rule is intended to provide flexibility to Rockfish Program participants by moving the season start date from May 1, 2021 to April 1, 2021. This emergency rule does not modify other provisions of the Rockfish Program.

This emergency rule is in response to the recent and unforeseen impacts that have prompted a limited shoreside market for flatfish as a result of the unforeseen lack of economically viable groundfish markets and the continued impacts of the COVID-19 pandemic and associated health concerns on the members of rockfish cooperatives. The lack of the flatfish market, comprising species such as arrowtooth flounder, have created a processing gap for the month of April in Kodiak. Modifying the season start to one month earlier will provide additional flexibility to Rockfish Program participants to mitigate negative economic and social impacts to harvesters and processors and the community of Kodiak, Alaska. Without the increased flexibility of an earlier season start date, if a COVID outbreak occurs resulting in the reduction of processing capacity for

several weeks, the rockfish season may conflict with the summer salmon fisheries, causing harvesters and processors to choose between revenue sources. It is likely that a significant portion of the harvest could be forgone. The associated loss in harvesting and processing revenues would likely impact the harvesters, crew, and communities that are active in the Rockfish Program.

Industry participants notified the Council and NMFS on January 29, 2021, of the continued safety and health concerns of the ongoing pandemic and seafood tariffs may impact Rockfish Program participants for the 2021 fishing year. The Council and NMFS had no way of foreseeing the impact on fishery operations.

Finally, the time required for notice-and-comment rulemaking would not provide relief from the forgone harvests because it would not provide sufficient time before the proposed season start date. The Rockfish Program season start date is May 1 and there is not enough time to follow the standard rulemaking process prescribed by the Magnuson-Stevens Act and required by the APA. NMFS has no other way than this emergency rule to amend the season start date in time to restore forgone fishing opportunities for 2021. Allowing for a longer time to harvest rockfish quota will provide immediate social and economic benefits that outweigh the value of the deliberative notice-and-comment rulemaking process.

Similarly, for the reasons above that support the need to implement this emergency rule in a timely manner, the Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness provision of the APA and make the emergency rule effective immediately upon publication in the **Federal Register**. As stated above, NMFS anticipates that this emergency rule will allow for additional flexibility to Rockfish Program participants to harvest and process the quota over a longer timeframe and should prevent prolonged economic losses from the potential forgone harvests.

This action is being taken pursuant to the emergency provision of the Magnuson-Stevens Act and is exempt from Office of Management and Budget (OMB) review.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

*Collection-of-Information Requirements*

This emergency rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 15, 2021.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF  
ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447; Pub. L. 111-281.

2. In § 679.80, stay paragraph (a)(3)(ii) and add paragraph (a)(3)(iii) to read as follows:

**§ 679.80 Allocation and transfer of rockfish QS.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(iii) *Rockfish cooperative*. Fishing by vessels participating in a rockfish cooperative is authorized from 1200 hours, A.l.t., April 1, 2021 through 1200 hours, A.l.t., November 15, 2021.

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[FR Doc. 2021-05685 Filed: 3/16/2021 4:15 pm; Publication Date: 3/19/2021]